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REMARKS

The present Response is submitted in reply to the Office Action of February 7, 2005 and the Applicant respectfully requests a two month extension of the period in which to respond to the same.

Claims 15 and 16 are presently pending in this application and the Examiner rejects both claims, under 35 U.S.C. § 103(a), as being unpatentable over Davis et al. '397 in view of Valley et al. '016. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

The Applicant generally concurs with the Examiner's evaluation of Davis et al. '397, to the extent referred to by the Examiner in the Office Action, but respectfully disagrees with the Examiner's interpretation of the teachings of Valley et al. '016 and this reference's combination with Davis et al. '397.

In particular, and considering for example the specific disclosure of Valley et al. '016 cited by the Examiner, Valley et al. '016 at column 16, lines 43-55 does not in fact describe a step of making an incision in the chest of the patient. Valley et al. '016 instead states that "the invention is especially useful. . .obviating the need for thoracotomy or other large incision", thereby instead teaching directly away from the present invention, which teaches a method starting with an incision in the chest of the patient adjacent to the ascending aortic arch.

Further in this regard, the Examiner cites column 27, lines 37-42 of Valley et al. '016 and apparently interprets the statements therein as meaning that Valley et al. '016 teaches the use of a dilator to expand the incision referred to with regard to column 16, lines 43-55 of Valley et al. '016. The Applicant again respectfully disagrees with the Examiner's interpretation of Valley et al. '016 for a number of reasons. For example, at column 16, lines 43-55, Valley et al. '016 refers to a thoracotomy or other large incision, which is not likely to require further expansion with a dilator, so that this statement by Valley et al. '016 is unlikely to be related to the statements by Valley et al. '016 regarding incisions of any form.

Second in this regard, at column 27, lines 37-42, Valley et al. '016 actually describes the use of ". . . a dilator placed in the infusion lumen of the catheter to provide stiffness for advancing and maneuvering the catheter into position (emphasis added)". It is clear, therefore, that Valley et al. '016 is not in fact referring to the placing of a dilator in an incision in order to expand the incision, but is instead referring to placing a dilator in the infusion lumen of the catheter. That is, in an internal passage of the catheter itself, to stiffen the catheter to allow easier control of the movement and positioning of the catheter, which is an entirely different use of the dilator and for an entirely different purpose.

Upon further review of Valley et al. '016, additional passages and Figures, such as in Fig. 1 and at column 17, lines 24-26, column 17, line 70, column 18, line 4, column 18, lines 17-20, 37-42 and 47-49, all show that Valley et al. '016, in fact, teaches forming an incision for the insertion of a catheter in either the femoral artery, the jugular vein, the right or left femoral veins, of the subclavical vein. At no point does Valley et al. '016 teach, suggest or disclose making an incision in the chest of the patient and directly inserting an occlusion catheter for ascending aorta from the incision.

It is therefore the belief and position of the Applicant that Valley et al. '016 does not teach essential steps of the present invention under the requirements and provisions of 35 U.S.C. 103. It is further the belief and position of the Applicant that, for this reason as well as the fact that Davis et al. '397 is also lacking this necessary teachings, the combination of Davis et al. '397 in view of Valley et al. '016 does not and cannot teach, suggest or disclose the present invention under the requirements and provisions of 35 U.S.C. 103.

In particular, neither Davis et al. '397 nor Valley et al. '016 teaches or even suggests the following steps of claims 15 and 16, namely,:

"making an incision or a hole in a chest of a patient to provide access to an ascending aorta from the outside and creating an opening at an insertion site of the ascending aorta," and

"expanding the opening with a dilator", as presently recited in the pending claims.

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The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the raised rejection of claims 15 and 16 , under 35 U.S.C. 103, in view of Davis et al. '397 and Valley et al. '016 and allow those two claims.

It will also be noted that the Applicant added new claim 17, directed essentially to the same subject matter as claims 15 and 16, wherein new claim 17 includes the same recitations distinguishing the present invention as recited in the claims over the cited prior art. New claim 17 thereby does not add any new subject matter to the present Application or claims and does not alter or extend the subject matter of the claims in any way.

It is therefore the belief and position of the Applicant that the present Application with new claim 17 should continue to be accorded the original filing date and that new claim 17 is distinguished over and allowable over the cited prior art for the same reasons that claims 15 and 16 are distinguished and allowable over the cited prior art.

The Applicant therefore respectfully requests that new claim 17 be entered into the present Application and be found allowable along with previously presented claims 15 and 16.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Davis et al. '397 and/or Valley et al. '016 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time.

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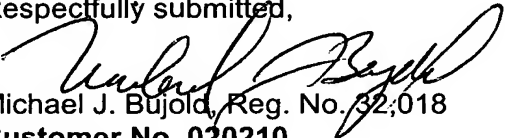
Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,


Michael J. Bujold, Reg. No. 32,018

Customer No. 020210

Davis & Bujold, P.L.L.C.

Fourth Floor

500 North Commercial Street

Manchester NH 03101-1151

Telephone 603-624-9220

Facsimile 603-624-9229

E-mail: patent@davisandbujold.com